

ORIGINAL

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC 20590

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In the Matter of)

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.)

and)

JOSEPH L. GALLOWAY)

Complainants)

v.)

UNITED AIRLINES, INC., AMERICAN AIRLINES, INC.,)
DELTA AIRLINES, INC., NORTHWEST AIRLINES, INC.,)
CONTINENTAL AIRLINES, INC., US AIRWAYS, INC.,)
TRANS WORLD AIRLINES, INC., AMERICA WEST)
AIRLINES, INC., ALASKA AIRLINES, INC., AMERICAN)
TRANS AIR, HORIZON AIR INDUSTRIES, INC.,)
MIDWEST EXPRESS, INC., AIR CANADA, KLM ROYAL)
DUTCH AIRLINES, TACA INTERNATIONAL AIRLINES,)
INC. and AIR FRANCE)

Respondents.)

Docket OST-99-6410 -9

ANSWER OF SOCIÉTÉ AIR FRANCE TO COMPLAINT

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December 10, 1999

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ANSWER OF SOCIÉTÉ AIR FRANCE TO COMPLAINT

Société Air France ("Air France"), pursuant to Section 302.204(b) of the Department's Rules of Practice (14 CFR 302.204(b)), hereby answers the complaint filed by the American Society of Travel Agents, Inc. ("ASTA") and Joseph Galloway against sixteen airlines including Air France alleging that unilateral changes in the travel agency commission structure announced in October 1999 by each carrier constitute an unfair method of competition under 49 USC 41712. As to Air France, the complaint should be dismissed; it fails to allege any claim of possible violation of section 41712 by Air France. Third Party Complaint of the Association of Retail

Travel Agents (ARTA) against IATA et. al ("ARTA Complaint") Order 99-4-19, p. 5.

In support whereof, Air France states the following:

1. The **gravaman** of ASTA's complaint is that certain U.S. and foreign airlines by recent unilateral actions to reduce travel agency commission levels to 5 percent subject to caps are putting U.S. travel agents out of business, and that this constitutes an unfair method of competition actionable under section 41712. Complaint, pp. 10-11. Consumers, they allege, could be harmed because they would have less information on the fares and services offered by various carriers. *Id.*, p. 8. The complaint does not allege that the airlines are acting in concert, or have in any way coordinated their individual changes to the commission structure. Indeed a number of carriers have not altered their commission rate program; such major carriers as British Airways, **Lufthansa** and **Swissair** are not named in ASTA's complaint.

2. The specific allegation involving Air France is found in just one paragraph of the complaint. That allegation is both factually inaccurate and irrelevant --

Finally, on Thursday, October 7, 1999, United Airlines announced a further reduction in its base domestic commission level from eight percent to five percent, continuing the caps previously established.. **Northwest**, Continental and Air France were quick to fall in line. Complaint, p. 11.

Of course, Air France as an international carrier does not have any "base domestic commission level," and Air France acted on its own on October 12 after analyzing the developments in the international travel marketplace.

3. Much of the rest of the **ASTA** Complaint (numbered paragraphs 1 to 10) consists of a diatribe against U.S. airline practices and U.S. airline-owned travel agency companies. These allegations do not involve Air France in any way, shape or form. Complaint, pp. 11-19.

- Numbered paragraphs 1,2,3 and 10 of the Complaint deal with practices of the Airlines Reporting Corporation (ARC), a company formed and owned by the U.S. scheduled carriers. Air France has no financial stake in ARC and has no control of or influence over ARC actions or decisions.

- Numbered paragraphs 4, 5 and 6 (pp. 13-14) deal with practices of GDSs (Global Distribution Systems or CRSs) “owned wholly or partly by airlines.” Air France has no ownership stake in any GDS or CRS that does business with travel agencies in the U.S., other than AMADEUS, whose U.S. market share is no greater than 5 percent. In any case Air France, a minority shareholder in AMADEUS, has no control or influence over the display of fares by AMADEUS in the U.S. market or in any other market for that matter.

- Numbered paragraphs 7 and 8 (pp. 14-16) deal with practices of named airlines other than Air France. Obviously, Air France has no control over other carriers’ practices.

- Numbered paragraph 9 (p.17-18) deals with practices of SATO, Inc., a travel agency owned by the U.S. scheduled airlines to handle government and corporate business. Air France has no financial stake in SATO and has no control or influence over SATO actions or decisions.

In short, outside of a bare allegation that Air France on October 12, 1999 changed its travel agency commission level -- inaccurately described as domestic commissions --, the remaining allegations in the ASTA Complaint have nothing whatsoever to do with Air France.

4. The fact that Air France unilaterally reduced its travel agency commission levels in October 1999 does not constitute, by any measure, an unfair method of competition, actionable under 49 USC 41712.

Absent an allegation of conspiracy or collusion among carriers -- of which there is none -- ASTA's Complaint fails to make a prima facie case of an unfair method of competition against Air France. ARTA Complaint, Order 99-4-19, p. 6 (“The.. **allegation** must fall because all four respondents deny acting in concert, and ARTA has not presented any evidence to the contrary.”)

Moreover, in a competitive marketplace, commission levels are another facet of the competition among airlines for travelers’ business. Carriers may raise travel agent commission levels to attract business; they may reduce commission levels in order to cut costs or because higher levels have not resulted in higher passenger revenues. The transatlantic including the U. S.-France market is highly competitive with 8 U.S. carriers offering nonstop flights on U. S.-Paris routes, and numerous European carriers serving the market on a one-stop basis. The suggestion that changes to commission levels in this competitive environment is an unfair method of competition is ludicrous at best. Indeed, the fact that some major European carriers --British Airways, Lufthansa and Swissair -- have maintained higher commission levels is evidence of the vitality of the competition for travel agency business on the transatlantic.

In addition, a reduction by Air France in travel agency commissions would not, as alleged, “eliminate or at the least severely impair the public’s access to travel agents.” Complaint, p.10. Air France is simply not big enough nor does it have the market power to drive U.S. travel agents out of business. The law is clear that conduct by Air France alone absent evidence of an intent to monopolize -- which could never be demonstrated in this case -- does not violate the antitrust laws or section 4 17 12. Spectrum Snorts. Inc. v. McQuillan, 506 U.S. 447 (1993). Air France’s U.S. travel agency sales are limited (obviously) to international travel originating in the U.S. bound for France and beyond (Air France cannot sell U.S. domestic travel). A travel agent’s

international sales on Air France represent a small slice of the U.S. travel agency business and hardly enough to affect whether a travel agent stays in business. In fact, Air France accounts for less than 1% of total ticket sales in the United States. Air France's minuscule amount of paid travel agency commissions when compared to the level of U.S. total commission sales cannot possibly lead to any travel agency bankruptcies as **ASTA's** alleged unfair method of **competition** claim would contend.

5. ASTA's Complaint utterly fails to state a prima facie case under section 41712 against Air France. ARTA Complaint, Order 99-4-19; Monsanto Co. v. Spray-rite Service Corp., 465 U.S. 752 (1984). Therefore as to Air France the complaint must be dismissed. As an unilateral action in a highly-competitive marketplace -- and a rather small sub-market in terms of total U.S. travel agency commissions -- Air France's change in its travel agency commission program could not possibly constitute an unfair method of competition. While Air France intends to continue to do business with U.S. travel agents for the benefit of its U.S. customers, Air France has done nothing that would jeopardize the continued operation of U.S. travel agents or violate 49 USC 41712.

WHEREFORE, Air France prays that the complaint filed by **ASTA** and Joseph Galloway, at least as to Air France, be dismissed with prejudice.


Respectfully submitted,



Michael Goldman
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Counsel for **Société** Air France

CERTIFICATE OF SERVICE

I hereby **certify** that on this **10th** day of December, 1999, a copy of the foregoing Answer of **Société Air France** to Complaint was served by first class mail, postage **pre-paid**, on all persons on the attached service list.



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